U.S. Department of Labor

Office of Administrative Law Judges
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Washington, D.C. 20001-8002

Date Issued: July 5, 2001

Case Nos.: 2001-JSA-3
2001-LCA-9

In the Matter of:

LOUIS A. DRAZIN,
Appellant/Employer[1]

v.

CERTIFYING OFFICER, EMPLOYMENT AND TRAINING ADMINISTRATION, REGION 6
Appellee

FINAL DECISION AND ORDER

This matter arises from an appeal from a wage determination made on behalf of the Employment and Training Administration ("ETA") by the California Employment Development Department, as requested by a Wage and Hour investigator in the course of his investigation into whether Mr. Drazin had complied with the prevailing wage aspects of his 1992 H-1B labor condition application. *See* 20 C.F.R. §§ 655.705, 655.800. In a May 30, 2001 preliminary Decision and Order, I found that the ETA Certifying Officer had erred under 20 C.F.R. § 655.731(d)(1) in summarily denying Mr. Drazin's appeal of the ETA wage determination. In that decision, however, I found that Mr. Drazin had a misconception as to the scope of the Job Service Complaint System (JSCS) proceeding and the instant appeal, and therefore ordered him to file a statement clarifying whether he (1) wants a remand to ETA for a full JSCS proceeding limited to the issue of the accuracy of the ETA wage determination, or (2) concedes that ETA correctly reported the 1992 prevailing wage for a Wholesaler II. In the decision, it was explained that pursuit of the JSCS complaint might only delay the ultimate resolution of the Wage and Hour investigation unless Mr. Drazin intends to present evidence that the ETA wage determination was in error.

[1]The caption of the case has been corrected to show Mr. Drazin as the appellant/employer, and the ETA Certifying Officer as the appellee.

Mr. Drazin filed a response on June 21, 2001 in which he states that he does not wish to pursue his JSCS appeal.[2] In view of circumstances of this case, I find that the interests of all parties would be best served by accepting Mr. Drazin's withdrawal of his JSCS appeal.

In Mr. Drazin's June 21, 2001 submission, he requests that I order Wage and Hour to turn over the H-1B complaint. I decline to issue such an order, however, because the substance of H-1B complaint does not appear to have any bearing on the sole issue presently before this tribunal – whether ETA correctly reported the 1992 prevailing wage for a "Wholesaler II" position.

Finally, on June 15, 2001, the Certifying Officer filed a motion for reconsideration, arguing that the May 30, 2001 decision was based on an erroneous reading of the applicable regulations -- that the regulation at 20 C.F.R. § 655.731(d)(2) "relieves an employer from having to exhaust remedies at the state level" and therefore precludes a remand of the matter to the State. CO Brief at 2. In view of Mr. Drazin's withdrawal of his JSCS appeal, the CO's motion for reconsideration is now moot.

ORDER

Based on the foregoing, it is ORDERED that

(1) the appeals in 2001-JSA-3 and 2001-LCA-9 are hereby DISMISSED, and

(2) this matter is remanded to the Wage and Hour Administration for completion of its LCA investigation.

THOMAS M. BURKE
Associate Chief Administrative Law Judge

JMB/trs

[2]I have thoroughly reviewed all of the filings made by Mr. Drazin in this matter, and I understand the argument he is making that ETA allegedly ratified his adjustment of the LCA wage rate, and that there are a number of equitable considerations that he would like for the Department of Labor to take into consideration in its determination of this matter. All of those arguments, however, are beyond the scope of the instant proceeding, which is limited to whether ETA provided the correct prevailing wage determination in response to the request of the Wage and Hour investigator.